Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 90-543

In The

Supreme Court of the United States

October Term, 1990

JOSEPH R. GIANNINI,
an individual,

Petitioner,

v.

MANUEL L. REAL, Chief Judge,
United States District Court for the Central
District of California, et al.,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

REPLY BRIEF

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REPLY ARGUMENT

1. The respondents have not submitted any evidence, argument, or law which would undermine the conclusion the Ninth Circuit's opinion in this case is in direct conflict with this Court's holding in *Piper*. A substantial majority of this Court has squarely held an attorney's "opportunity to practice law" is a "fundamental right" protected by "Privileges and Immunities Clause". 470 U.S. 274 (1985) The Ninth Circuit's holding an out-of-state licensed attorney's opportunity to practice law in California is not fundamental – is clearly erroneous.

The Ninth Circuit also wholly disregarded the *Piper* progeny. See *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1987) (discretionary admission on motion provisions come within the ambit of the privileges and immunities clause). See *Barnard v. Thorstenn*, 109 S. Ct. 1294 (1984) (geographic isolation and inadequate resources to supervise the ethics of a nationwide bar membership is not sufficient jurisdiction for discrimination). See *Austin v. New Hampshire*, 470 U.S. 656, 660 (1975) (the norm is comity under the privileges and immunities clause). The respondents, similar to the Ninth Circuit, do not analyze the holdings of these recent U.S. Supreme Court decisions.

The cases relied upon by respondents are herein not relevant. *Lupert v. California State Bar*, 761 F.2d 1325 (8th Cir.), cert. denied, 474 U.S. 916 (1985) concerns a first year law student, and not a licensed attorney with a constitutionally protected right. *Leis v. Flynt*, 439 U.S. 438 (1979) as the Court has made clear, is limited to pro hac vice

admission. See *Supreme Court of New Hampshire v. Piper supra,* 470 U.S. at 283 fn. 16.

2. The respondents have also not submitted any explanation why petitioner has been fully denied the right to cross-examination and discovery. Or why, not one defendant has ever testified or submitted an affidavit? The Ninth Circuit's decision in this case is the product of unequivocal "home team" favoritism.

3. The respondents also do not argue this petition for writ of certiorari does not raise important questions of federal law which should be settled by this Court. See *Frazier v. Herbe,* 482 U.S. 641, 648 fn. 7 (there is a growing body of specialized federal law, a mobile federal bar, and an increased demand for specialized legal services regardless of state boundaries. See *Supreme Court of Virginia v. Friedman supra,* 487 U.S. at 71. (The Court's ruling penalizes Virginia, which has at least gone part way towards accommodating the present mobility of our population, but of course leaves untouched the rules of those states which allow no reciprocal admission or motion). See Smith, *Time for a National Practice of Law Act,* 64 A.B.A.J. 557, 558 (1978) ("It would be to the direct benefit of both the public and legal profession, under proper regulation and registration, to practice law anywhere in the United States").

4. The respondents also do not controvert petitioner's integrity or competence as an attorney. The respondents have not pointed to any facts which would rationally establish why out-of-state attorneys in California have to undergo a Judge Bork confirmation process

and satisfy the whim of his or her competitor on a shallow entry level performance test that is less reliable than flipping a coin.

5. The Solicitor General also does not explain why the Ninth Circuit employed a rational basis standard of review. This Court has recently, in a challenge to a local U.S. District Court admission rule, employed a "principles of right and justice/"rational and necessary" standard of review. Clearly, as a matter of law, there is a significant difference between a "rational" and "rational and necessary" standard of review. Approximately 40 U.S. District Courts do not find it "necessary" to deny general admission to attorneys licensed in other states. Furthermore, twenty-five states have reciprocity provisions for out-of-state attorneys, which would further vicariously qualify attorneys for general admission in many District Courts.

6. The Solicitor General also does not explain why petitioner, who has extensive experience as a federal agent, is qualified to represent a client, "vindicate federal rights" and "champion unpopular clauses", in the N. District of California, the Ninth Circuit, and the U.S. Supreme Court, and is not qualified for admission in Central District of California.

7. This Court has recognized that out of state attorneys serve an important function to our government of checks and balances. Diversity of viewpoint and freedom of speech and advocacy are restricted when a District Court limits general admission to locally licensed practitioners. This restriction on advocacy offends notions of Federalism.

Former Chief Judge Warren Burger is well known for his condemnation of the existing hodge-podge of antiquated out-of-state attorney admission rules. Respondent District Judge Tashima also has argued the challenged local district court admission rules are outdated and should be invalidated. This Court should issue a writ and consider the issues raised in this petition.

In summary, the needs of our modern society and the integrity of the federal system demands this Petition for Writ of Certiorari be granted.

Respectfully submitted,

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